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1 as IME RESOURCES LLC) ("EXAMWORKS"), through their respective attorneys of record, that
2 a Protective Order be entered by this Court as follows:

3 This Stipulation and Protective Order shall be applicable to and shall apply to the production
4 and exchange of all document requests and documents, interrogatories and answers to
5 interrogatories, depositions, request for admissions and responses to requests for admissions,
6 exhibits, pleadings, and all other information exchanged and furnished in this action by the parties
7 that are confidential and/or proprietary.

8 **I. SCOPE**

9 (a) The parties acknowledge that discovery will require disclosure of information that is
10 private and personal or confidential and proprietary, and may include personnel records, medical
11 records, personnel policies, employment offers, trade secrets, competitive analyses, income
12 statements, client or customer information, and financial records and statements, along with other
13 proprietary or confidential information. As a result, the parties agree that they will be required to
14 enter into a Protective Order on the following terms to ensure the continuing confidentiality of such
15 information. The parties further acknowledge that this Order does not confer blanket protections on
16 all disclosures or responses to discovery and that the protection it affords extends only to the limited
17 information or items that are entitled under the applicable legal principles to treatment as
18 confidential.

19 (b) This Protective Order shall limit the use or disclosure of documents, deposition
20 testimony, and related information which are or which embody or disclose any information
21 designated hereunder as "Confidential," and shall apply to:

22 (i) All such documents, including those from third parties, so designated in
23 accordance with this Protective Order and legal standards and definitions, and all information
24 contained therein;

25 (ii) Portions of deposition testimony and transcripts and exhibits thereto which
26 include, refer to, or relate to any Confidential Information;

27 (iii) All information, copies, extracts, and complete or partial summaries prepared
28 or derived from Confidential Information; and

1 (iv) Portions of briefs, memoranda, or any writings filed with or otherwise
2 supplied to the Court, which include or refer to any such Confidential Information.

3 (c) Any person designating documents, testimony, or other information as "Confidential"
4 hereunder asserts that he or she believes in good faith that such material is Confidential Information
5 which is not otherwise available to the public generally. Each party or non-party that designates
6 information or items for protection under this Order must take care to limit any such designation to
7 specific material that qualifies under the appropriate standards. A designating party must take care
8 to designate for protection only those parts of material, documents, items, or oral or written
9 communications that qualify so that other portions of the material, documents, items, or
10 communications for which protection is not warranted are not swept unjustifiably within the ambit
11 of this Order.

12 **II. DESIGNATION OF DOCUMENTS AND DEPOSITIONS**

13 (a) Designation of a document as "Confidential" shall be made by stamping or writing
14 CONFIDENTIAL on the document(s). Alternatively, the parties may designate documents as
15 confidential by producing the documents with a letter designating documents by Bates number as
16 "Confidential." The parties shall make every effort to designate as CONFIDENTIAL only
17 documents that contain information protected as confidential under California law, including but not
18 limited to, proprietary information, financial information, trade secrets, personnel, medical and
19 payroll information, or other similarly protected information. The failure to so designate documents
20 at the time of production shall not constitute a waiver of the protection of this Order and any party
21 may, at any time during the course of the action up to 30 days before the actual trial date designate
22 any documents or information produced as confidential that have not as yet been so designated.
23 Stamping the legend "CONFIDENTIAL" on the cover of any multi-page document shall designate
24 all pages of the document as confidential, unless otherwise indicated by the designating party, but
25 only if the entire document is produced in bound or otherwise intact manner.

26 (b) Designation of a deposition or other pretrial testimony, or portions thereof, as
27 "Confidential" shall be made by a statement on the record by counsel for the party or other person
28 making the claim of confidentiality at the time of such testimony. The portions of depositions so

1 designated as "Confidential" shall be taken only in the presence of persons qualified to receive such
2 information pursuant to the terms of this Protective Order: the parties and their attorneys and staff,
3 the court reporter, the deponent, and the deponent's attorney. Failure of any other person to comply
4 with a request to leave the deposition room will constitute sufficient justification for the witness to
5 refuse to answer any question calling for disclosure of Confidential Information so long as persons
6 not entitled by this Protective Order to have access to such information are in attendance. The parties
7 shall instruct the court reporter to segregate such portions of the deposition in a separate transcript
8 designated as "Confidential." Portions of such deposition transcripts shall be clearly marked as
9 "Confidential" on the cover or on each page, as appropriate.

10 (c) Any party may designate documents produced or portions of depositions taken as
11 containing Confidential Information even if not initially marked as "Confidential" in accordance
12 with the terms of this Protective Order by so advising counsel for each other party in writing and by
13 reproducing said documents with the required confidential designation. Thereafter each such
14 document or transcript shall be treated in accordance with the terms of this Protective Order;
15 provided, however, that there shall be no liability for any disclosure or use of such documents or
16 transcripts, or the Confidential Information contained therein, which occurred prior to actual receipt
17 of such written notice. Any person who receives actual notice of any such designation of previously
18 produced documents or deposition transcripts as containing Confidential Information shall thereafter
19 treat such information as if it had been designated as "Confidential" at the time he, she, or it first
20 received it in connection with this matter.

21 (d) Inadvertent failure to designate Confidential Information shall not be construed as a
22 waiver, in whole or in part, and may be corrected by the producing party designating document
23 produced or portions of depositions taken as containing Confidential Information even if not initially
24 marked as "Confidential" in accordance with the terms of this Protective Order and, specifically,
25 Paragraph 2, subsection (c), above.

26 **III. LIMITATIONS ON DISCLOSURE OF CONFIDENTIAL INFORMATION**

27 (a) No Confidential Information shall be disclosed by anyone receiving such information
28 to anyone other than those persons designated herein and in no event shall Confidential Information

1 be used, either directly or indirectly, by anyone receiving such information for any business,
2 commercial or competitive purpose or for any purpose whatsoever other than the direct furtherance
3 of the litigation of this action in accordance with the provisions of this Protective Order.

4 (b) Confidential Information shall not be disclosed by any person who has received such
5 information through discovery in this action to any other person except to:

6 (i) The parties hereto;

7 (ii) Attorneys of record for the parties and their respective associates, clerks and
8 employees involved in the conduct of this litigation;

9 (iii) In-house counsel for Examworks, its subsidiaries, and/or its affiliates;

10 (iv) Non-party experts and consultants engaged by counsel for the purpose of
11 preparing or assisting in this litigation, and their respective clerks and employees involved in
12 assisting them in this litigation, to the extent deemed necessary by counsel;

13 (v) The Court, its officers, court reporters, and similar personnel, provided further
14 that Confidential Information lodged with the Court under seal is subject to further evaluation by the
15 Court; and

16 (vi) Any person as to which it is apparent from the face of a document was either
17 an author, recipient, had knowledge of the contents therein, or was otherwise entitled to view the
18 Confidential Information prior to the intended disclosure in this action.

19 (c) Before any person described in Paragraph 3, subsection (b)(iv), receives or is shown
20 any document or information which has been designated as Confidential, such person shall be given
21 a copy of this Protective Order and shall agree in writing, in the form of the Acknowledgment and
22 Agreement attached hereto as Exhibit A, to be bound by the terms hereof. The original of each such
23 Acknowledgment and Agreement shall be maintained by counsel and shall be produced for
24 inspection by opposing counsel upon request. Any counsel may require the other counsel to provide
25 a copy of the Acknowledgment and Agreement signed by a witness at a deposition before the witness
26 is deposed with regard to any Confidential Information.

27 (d) Nothing in this Protective Order shall be construed to require execution of the written
28 Acknowledgment and Agreement referred to in Paragraph 3, subsection (c), above, or to prevent

1 disclosure of Confidential Information, by the party producing and designating such Confidential
2 Information, or by any employee of such party.

3 (e) The substance or content of Confidential Information, as well as all notes and
4 memoranda relating thereto, shall not be disclosed to anyone other than as set forth in Paragraph 3,
5 subsections (b)(i)–(b)(vi), above.

6 **IV. FILING DOCUMENTS UNDER SEAL**

7 (a) ~~If a party submits a document to the Court, which the other party has designated as
8 CONFIDENTIAL or which contains Confidential Information and which has not been successfully
9 challenged under Paragraph 5 below, the submitting party shall comply with the procedures set forth
10 in California Rule of Court 2.551. Specifically, all Confidential Information filed with the Court and
11 any pleading or other paper containing Confidential Information filed with the Court shall be
12 redacted so that they do not disclose the contents of the Confidential Information that is subject to
13 the Protective Order. An unredacted copy of the Confidential Information or other paper containing
14 the Confidential Information shall be lodged with the Court in a sealed envelope labeled,
15 “CONDITIONALLY UNDER SEAL.” The party submitting the lodged record must affix to the
16 envelope a cover sheet containing all of the information required on a caption page under California
17 Rule of Court 2.111 and stating that the enclosed record is subject to a motion or application to file
18 the record under seal. Without written permission from the Designating Party or a court order
19 secured after appropriate notice to all interested persons, a Party may not file in the public record in
20 this action any Confidential Information. Confidential Information may only be filed under seal
21 pursuant to a court order authorizing the sealing of the specific Confidential Information at issue.
22 However, the designation of material as confidential, without more, is insufficient to obtain a sealing
23 order. Any party that seeks to file Confidential Information under seal must comply with Local Rule
24 141, which governs motions for a sealing order. As provided in Local Rule 141, a sealing order will
25 issue only upon a request establishing that the Confidential Information at issue is privileged,
26 protectable as a trade secret, or otherwise entitled to protection under the law. Further, the briefing
27 on the motion for a sealing order shall address U.S. Supreme Court and Ninth Circuit standards for
28 whether the material may be filed under seal. Regardless of which party files the motion for a sealing~~

1 order, the party that designated the material as confidential shall file a brief addressing those
2 standards, and shall have the burden of establishing that the Protected Material should be filed but
3 not made publicly available.

4 (b) ~~Any party requesting that a record be filed under seal must comply with California~~
5 ~~Rules of Court 2.550 and 2.551.~~ The parties agree and recognize that Confidential Information or
6 any paper containing Confidential Information cannot be filed under seal based solely upon this
7 stipulated Protective Order.

8 **V. CHALLENGE TO CONFIDENTIALITY DESIGNATION**

9 Any party that wishes to challenge the designation of a document or other information as
10 "Confidential" may, for good cause, bring a motion before the Court requesting that the Court deny
11 the designation of any document or information as "Confidential." The interested parties or other
12 persons shall attempt to resolve such disagreements before submitting them to the Court. Pending
13 resolution of any dispute concerning such designation, all parties and persons governed by this
14 Protective Order shall treat all documents and information previously designated as "Confidential"
15 as protected from further disclosure by this Protective Order.

16 **VI. SURVIVAL OF ORDER – RETURN OF DOCUMENTS**

17 (a) The provisions of this Order shall continue in effect until otherwise ordered by the
18 Court, or one of them, after notice and an opportunity to be heard is afforded to the parties to this
19 action. The final determination or settlement of this action shall not relieve any person who has
20 received Confidential Information or agreed to be bound by the terms of this Protective Order of his,
21 her, or its obligations hereunder. The Court shall retain jurisdiction after such final determination or
22 settlement to enforce the provisions of this Order. Upon completion of the litigation, all documents
23 (including copies of documents) containing Confidential Information shall be destroyed or returned
24 to counsel for the producing party, except that (a) documents on which any person has made notations
25 may be destroyed and not returned, and (b) the parties' respective attorneys of record may retain one
26 copy of each such document for use in connection with any disputes which may arise under the
27 Court's retention of jurisdiction as provided for herein.

28 (b) Except as provided in Paragraph 4 or Paragraph 6, subsection (a), hereof, documents

1 or things containing the other party's Confidential Information shall at all times be in the physical
2 possession of those persons qualifying under Paragraph 3 hereunder, or be kept by counsel of record
3 at the premises regularly maintained by such counsel of record as and for their respective law offices.

4 **VII. USE OF DOCUMENTS AT TRIAL**

5 This Stipulation and Protective Order, except as provided in Paragraph 4, above, shall not
6 apply to information designated or marked "Confidential" hereunder which is used at any evidentiary
7 hearing or trial in this action. The parties hereby reserve their rights to use, or seek to limit the
8 disclosure of, Confidential Information at any such hearing or trial.

9 **VIII. USE OF OWN DOCUMENTS**

10 Nothing in this Protective Order shall limit the use by any party, person, or entity of his, her,
11 or its own document or information for legitimate business purposes unrelated to this litigation, even
12 if such documents or information have been designated as "Confidential."

13 **IX. APPLICATIONS TO COURT**

14 (a) This Protective Order shall not preclude or limit any party's right to oppose or object
15 to discovery on any ground which would be otherwise available. This Protective Order shall not
16 preclude or limit any party's right to seek in camera review or to seek further and additional
17 protection against or limitation upon production or dissemination of information produced in
18 response to discovery, including documents and their contents.

19 (b) Any person to or by whom disclosure or inspection is made in violation of this
20 Protective Order, and who has knowledge of this Protective Order, shall be bound by the terms
21 hereof.

22 (c) The parties hereto, and all other persons who receive Confidential Information
23 pursuant hereto, agree that any party or other person injured by a violation of this Order does not
24 have an adequate remedy at law and that an injunction against such violation is an appropriate
25 remedy. In the event any person shall violate or threaten to violate any terms of this Order, the parties
26 agree that the aggrieved party may immediately apply to obtain injunctive relief against any such
27 person. In the event the aggrieved party shall do so, the respondent person subject to the provisions
28 of this Order shall not employ as a defense thereto the claim that the aggrieved party has an adequate

1 remedy at law. Any persons subject to the terms of this Order agree that the Court shall retain
2 jurisdiction over it and them for the purposes of enforcing this Order, including but not limited to
3 issuing an injunction. In addition to injunctive relief, as specified herein, the Court may impose
4 monetary and/or issue sanctions, as well as other relief deemed appropriate under the circumstances
5 for a violation of this Protective Order.

6 (d) If any deponent required under the terms of this Protective Order to execute the
7 written Acknowledgment and Agreement described in Paragraph 3, subsection (c), above, refuses to
8 do so, the parties may complete the deposition on other matters or adjourn it and move the Court for
9 any appropriate relief, including (without limitation) relief from this Protective Order as to that
10 deponent, or an order that the deponent shall execute the written agreement described in Paragraph
11 3, subsection (c), above, or an order that deponent shall be bound by the terms of this Protective
12 Order. Any non-party whose Confidential Information is the subject of such a motion shall be given
13 notice thereof.

14 **X. AGREEMENT TO COOPERATE**

15 The parties hereto and their respective attorneys of record agree that, when one party's
16 attorney requests a deponent to sign the written Acknowledgment and Agreement described in
17 Paragraph 3, subsection (c), above, the other party's attorney will join in such request, unless that
18 attorney has a good faith basis for refusing to join in such a request; provided, however, that this
19 requirement shall not apply with respect to any deponent who is represented at his or her deposition
20 by an attorney of record for any party hereto (including any member or associate of their respective
21 law firms). An attorney's request to sign such Acknowledgment pursuant to this Paragraph shall not
22 be construed to constitute legal advice to the deponent, but shall and may be stated to be simply a
23 request to facilitate discovery in this action.

24 **XI. NO ADMISSIONS**

25 Neither entering into this Stipulation for Protective Order, nor receiving any documents or
26 other information designated as "Confidential," shall be construed as an agreement or admission (1)
27 that any document or information designated as "Confidential" is in fact Confidential Information;
28 (2) as to the correctness or truth of any allegation made or position taken relative to any matter

1 designated as "Confidential"; or (3) as to the authenticity, competency, relevancy, or materiality of
2 any information or document designated as "Confidential."

3 **XII. NO WAIVER OF PRIVILEGES OR OBJECTIONS TO ADMISSIBILITY**

4 Nothing in this Protective Order shall be construed as requiring disclosure of Confidential
5 Information, including, but not limited to, materials subject to protection under the attorney-client
6 privilege and/or the attorney work-product doctrine, the trade secrets privilege, or any other
7 applicable privileges or rights of privacy, or requiring disclosure of Confidential Information that is
8 otherwise beyond the scope of permissible discovery. Further, nothing in this Protective Order shall
9 be construed as a waiver by a party of any objections that might be raised as to the admissibility at
10 trial of any evidentiary materials.

11 **XIII. DISCLOSURE IN VIOLATION OF ORDER**

12 If any Confidential Information is disclosed to any person other than in the manner authorized
13 by this Protective Order, the party responsible for the disclosure must immediately in writing notify
14 the opposing party and the designating party of all pertinent facts relating to such disclosure to the
15 attention of, and without prejudice to the rights and remedies of the designating party, make every
16 effort to prevent further unauthorized disclosure on its own part or on the part of the recipient of such
17 Confidential Information.

18 **XIV. MODIFICATION – FURTHER AGREEMENTS**

19 Nothing contained herein shall preclude any party from seeking from the Court, modification
20 of this Stipulated Protective Order upon proper notice or shall preclude the parties from entering into
21 other written agreements designed to protect Confidential Information.

22 **XV. COUNTERPARTS**

23 This Stipulation for Protective Order may be executed in counterparts, each of which shall
24 be deemed an original, and which together shall constitute one instrument.

1 DATED: _____, 2020

2 OGLETREE, DEAKINS, NASH,
3 SMOAK & STEWART, P.C.

4 By: _____ signature on original

5 Michael J. Nader
6 Jill L. Schubert

7 Attorneys for Defendant EXAMWORKS,
8 LLC, a Delaware Limited Liability
9 Company (also erroneously sued as IME
10 RESOURCES LLC)

11 DATED: _____, 2020

12 BROCK & GONZALES, LLP

13 By: _____ signature on original

14 Robert P. Biegler
15 Timothy J. Gonzales
16 D. Aaron Brock

17 Attorneys for Plaintiff LINDA TERHUNE

18 **[PROPOSED] ORDER**

19 The Court has reviewed the Stipulation Regarding Production of Confidential Documents
20 and Proprietary Information filed by Defendant EXAMWORKS, LLC, (“Defendant”) and Plaintiff
21 LINDA TERHUNE (“Plaintiff”) (collectively, “Parties”), through their counsel of record, requesting
22 that the Court enter an Order.

23 **IT IS SO ORDERED.**

24 DATED: April 1, 2020.

25 
26 EDMUND F. BRENNAN
27 UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

**ACKNOWLEDGMENT OF RECEIPT OF PROTECTIVE ORDER REGARDING
CONFIDENTIAL INFORMATION AND AGREEMENT TO BE BOUND THEREBY**

4 I hereby acknowledge receipt of and that I have read a copy of the Stipulation for Protective
5 Order and Order (the “Order”), which I understand was made on _____, 2020, in the
6 action entitled *Linda Terhune v. Examworks LLC. et al.*, Case No. 2:20-cv-00240-TLN-EFB,
7 USDC, Eastern District of California. I agree that I will be bound by the provisions of the Order
8 with respect to any Confidential Information provided to me under the terms thereof. I agree that,
9 if I receive any Confidential Information, I will not make any copies thereof nor disclose such
10 Confidential Information except as permitted by the Order. I further understand that if I fail to
11 comply with the terms of the Order, I may be subject to sanctions by the Court, and I hereby
12 consent to personal jurisdiction in the State of California with respect to any matter relating to or
13 arising out of the Order.

Executed this ____ day of _____, 2020, at _____, _____.

Name: _____

Affiliation:

Address: